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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,130	03/26/2004	Christopher Vincent Decker	20,108A	8829

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KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

WAGGONER, TIMOTHY R

ART UNIT	PAPER NUMBER
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3651

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/810,130	Applicant(s) DECKER ET AL.	
	Examiner Timothy R. Waggoner	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-37 is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☒ Claim(s) 38-40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>02/07/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

Claims 28 and 30 are objected to because of the following informalities: Claim dependency is incorrect and should point to 27 and 29 respectively. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,4,5,6,8,16,19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens USPN 4,964,526 in view of Petruzzi USPN 5,699,925.

Stephens discloses a dispenser comprising:

(Re claim 1) "a first member" (28 figure 1). "a second member pivotally connected to said first member by a first hinge ... a top wall with a second entrance formed therethrough" (70 figure 1). "a third member secured to said first member ... a second hinge aligned along a common axis with said first hinge said third member capable of pivoting on said second hinge to cover said second entrance" (45 figure 1).

Stephens does not disclose the first and second members being hollow members with a depth dimension.

Petruzzi teaches a storage container comprising a first and second member with each being hollow and having a depth dimension.

It would be obvious to one skilled in the art to modify the members defining the storage compartment of Stephens to be hollow and have a depth dimension as taught by Petruzzi because it is a common storage apparatus and provides additional storage space over a similar box with a top member which is not hollow.

(Re claim 4) "rectangular configuration with a longitudinal axis a transverse axis and a vertical axis, said dispenser having a first longitudinal edge spaced apart and oppositely aligned to a second longitudinal edge, and said first hing is located adjacent to said first longitudinal edge" (28 figure 3).

(Re claim 6) "first and second hinges are coaxially aligned along said first longitudinal edge" (34 figure 3).

(Re claim 8) "second and third members pivot on said first longitudinal edge and move away from said second longitudinal edge" (figure 6).

(Re claim 16 in view of claim 1) "a first member" (28 figure 1). "a second member pivotally connected to said first member by a first hinge ... a top exterior wall with a second entrance formed therethrough" (70 figure 1). "a third member secured to said first member ... a second hinge coaxially aligned with said first hinge said third member capable of pivoting on said second hinge to cover said second entrance" (45 figure 1).

"entrance having a maximum dimension which ranges from 70% to about 100%"
("expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim", MPEP 2115)

(Re claim 19) "maximum dimensions which ranges from between about 75% to about 95% of the width of said sheet-like article" ("expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim", MPEP 2115).

(Re claim 20) "said dispenser has a longitudinal axis, a transverse axis and a vertical axis, said dispenser having a first longitudinal edge spaced apart and oppositely aligned to a second longitudinal edge (28 figure 3) and said first and second hinges being coaxially aligned along said first longitudinal edge (34 figure 3)".

Claims 2,3,10 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens 4,964,526 in view of Julius USPN 5,542,567.

(Re claims 2,3 and 10) Stephens discloses the dispenser as claimed in claim 1.

Stephens does not disclose the first and second members being integrally formed or being molded.

Julius teaches the integral forming of a first and second member and the two of them being molded.

It would be obvious to one skilled in the art to modify the hinge mechanism of Stephens to allow for the containers being molded as one integral unit as taught by Julius because it is faster to produce.

(Re claims 13-15) "expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim", MPEP 2115.

Claims 7,9,11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens USPN 4,964,526 and Stephens as modified by Julius 5,543,567. With respect to claims 1,10 and 16, Stephens and Stephens as modified by Julius does not disclose specific values for height and aperture opening dimensions. However, one of ordinary skill in the art is expected to routinely experiment with the parameters, especially when the specifics are not disclosed, so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been obvious through routine experimentation and optimization, for one of ordinary skill in the art to arrive at the height and aperture-opening dimensions as claimed.

Claims 5,12, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over above rejections as applied to claim 1, 10 and 16 above, and further in view of Ito et al. USPN 4,469,243.

(Re claims 5,12 and 18) Stephens discloses a dispensing aperture of elliptical configuration with a major axis aligned parallel to said traverse axis.

Stephens does not disclose it aperture being an ellipse.

Ito teaches a dispensing aperture elliptical in shape.

It would be obvious to one skilled in the art to modify the shape of the dispensing aperture of Stephens to be an ellipse as taught by Ito because an ellipse is a commonly used aperture shape used in many applications.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens USPN 4,964,526 in view of Margulies USPN 4,462,507.

Stephens discloses the dispenser as claimed in claim 16.

Stephens does not disclose the lid being movable beyond 180,225 or 270 degrees.

Margulies teaches a lid that has a living hinge which allows for the lid to be moved beyond 180,225 or 270 degrees.

It would be obvious to modify the hinge of Stephens to allow for the hinge to move over 270 degrees in view of the teachings of Margulies because it allows for unobstructed access to the articles being stored.

Allowable Subject Matter

Claims 38-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 24-37 are allowed over the present prior art.

The following is a statement of reasons for the indication of allowable subject matter: a first bifurcated living hinge with a second living hinge positioned between said bifurcated parts of said first hinge in combination with the remaining claim language is not fairly taught or suggested by the present prior art.

Conclusion

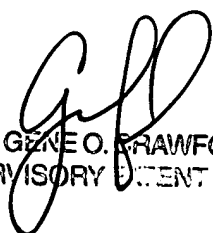
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. USPNs 5,540,354, 6,419,114, Des182,410, and 6,729,498.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy R. Waggoner whose telephone number is (571) 272-8204. The examiner can normally be reached on Mon-Thu 8am-2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TRW


GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER